IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

MONDAY, THE 20TH AUGUST 2007 / 29TH SRAVANA 1929

WP(C).No. 22066 of 2007(B)

AGAINST THE ORDER DATED / / IN IA. 408 /2007 IN OA.242/2005 of DEBT RECOVERY TRIBUNAL, ERNAKULAM

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PETITIONER:

MULACKAL CONSTRUCTIONS,
REPRESENTED BY ITS MANAGING PARTNER,
SAYED MOHAMMED RAWTHER, AGED 64 YEARS,
S/O HAJEE M.A.PAREED RAWTHER, MULACKAL HOUSE,
SOUTH PETTAH, MUVATTUPUZHA.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:

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1. DEBT RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL,
PANAMPILLY NAGAR, ERNAKULAM.

2. GENERAL MANAGER,
SOUTH INDIAN BANK, THRISSUR.

3. MANAGER,
SOUTH INDIAN BANK,
MUVATTUPUZHA.

4. T.A.MAJEED, C.C.NO.13/761,
GREEN HOUSE, KARUVELIPPADY,
KOCHI-5.

ADDL. RESPONDENT:

5. RISHAD, S/O.T.A.MAJEED,
C.C. NO.13/761, GREEN HOUSE,
KARUVELIPPADY, KOCHI-5.

(ADDL. R5 IS IMPLEADED AS PER ORDER DT.10.8.07
IN I.A. NO.10764/2007.)

R2&3 BY ADV. SRI.K.PRABHAKARAN, SC
R5 BY ADV. SRI.K.S.DILIP
SRI.SAJU N.A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE RECEIPT DT.7.11.2006.

P2: .DO. DT.11.1.2007.

P3: .DO. DT.5.2.2007.

P4: TRUE COPY OF PROCLAMATION OF SALE DT.22.1.2007.

P5: TRUE COPY OF PETITION DT.14.2.2007 SUBMITTED BY PETITIONER BEFORE R2.

P6: .DO. DT.21.2.2007 .DO. R1.

P7: TRUE COPY OF JUDGMENT DT.23.5.2007 PASSED BY THIS HON'BLE COURT IN W.A. NO.587/2007.

P8: TRUE COPY OF COUNTER AFFIDAVIT DT.17.4.2007 FILED BY R3 BEFORE THE TRIBUNAL IN I.A. NO.408/2007 IN O.A. NO.242/2005.

P9: TRUE COPY OF PETITION DT.18.6.2007 SUBMITTED BY PETITIONER BEFORE R1 (IA NO.1041/2007 IN DRC NO.2219/SIB/KM).

P10: TRUE COPY OF PETITION DT.3.7.2007 SUBMITTED BY PETITIONER BEFORE R1 (I.A. NO.1147/2007 IN IA NO.1041/2007 IN DRC NO.2219/SIB/KM).

P11: TRUE COPY OF PETITION DT.3.7.2007 SUBMITTED BY PETITIONER BEFORE R1 (I.A. NO.1148/2007 IN DRC NO.2219/SIB/KM).

P12: TRUE COPY OF COUNTER AFFIDAVIT DT.9.7.2007 SUBMITTED BY PETITIONER BEFORE R1 IN I.A. NO.1041/2007 IN DRC NO.2219/SIB/KM.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.22066 of 2007

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Dated this the 20th day of August, 2007.

JUDGMENT

Heard counsel for the petitioner, Standing Counsel for the South Indian Bank and counsel appearing for the additional 5th respondent. The petitioner's property is sold by the Recovery Officer to additional 5th respondent for Rs.30 lakhs. The sale proceedings is sufficient to take care of the Bank debt and expenses. The petitioner has made application under Rule 61 of the Second Schedule to the Income Tax Act for setting aside sale. The petitioner has to necessarily deposit debt due to the Bank and 5% thereof to set aside sale. Prayer in the W.P. is for further time to deposit the amount. Counsel for the additional 5th respondent submitted that entire amount is deposited by the purchaser more than two months back. The petitioner has undertaken to repay the amount deposited by the purchaser together with compensation within two months from now. I feel 2% interest per month from date of deposit i.e. interest at the rate of 24% per annum will be an adequate compensation to the purchaser. The W.P. is accordingly allowed directing the petitioner to pay entire amount deposited by the 5th respondent together with 8% thereof on or before 20.10.2007. If

petitioner advances payment by one month, petitioner needs to pay only 6% interest. If payment is made as above before 20.10.2007, sale will stand cancelled. There will be direction to the Recovery Officer to make payment of the amount deposited by the purchaser to the Bank without any delay after recovering cost and poundage fee.

C.N.RAMACHANDRAN NAIR
Judge

pms